

UNITED STATES DISTRICT COURT
COURT OF FEDERAL CLAIMS

_____)	
CAMERON ELLIS,)	
)	
Plaintiff,)	
)	
v.)	No. 19-1489C
)	Judge Kaplan
UNITED STATES POSTAL SERVICE,)	
)	
Defendant.)	
_____)	

OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

Defendant has filed a Motion to Dismiss claiming this case does not allege facts supporting a breach of contract or negligence claim. Defendant is incorrect. Plaintiff has amply alleged facts demonstrating that Defendant did, in fact, breach a contract with Plaintiff, and act negligently in connection with this matter. In further support of his claims, Plaintiff attaches various USPS documents (See Exhibits 1-5), already in USPS custody but oddly not mentioned in Defendant’s motion to dismiss even though Defendant sought an extension from this Court to file its response based on its claimed need to retrieve these documents.

FACTS

As set forth in Plaintiff’s complaint, on or about June 11, 2018, Plaintiff went to Defendant’s Belmont, Massachusetts branch and sent a brand new Gucci backpack to Los Angeles, California through the U.S. Mail after selling it on eBay for \$800.00. (Exhibit 1) Plaintiff paid \$1,250.00 for the backpack in August 2017. (Exhibit 5).

After the backpack was shipped, but before it was delivered, Plaintiff purchased an intercept from Defendant on June 23, 2018. (Exhibit 2) An intercept is a contractual guarantee

that a package will not be delivered to the addressee, and will be returned to the sender. Defendant confirmed Plaintiff's purchase of the intercept, and informed Plaintiff that the intercept had taken effect. (See Plaintiff's Complaint) This was a false statement. On June 25, 2018 at 08:58 the backpack is described in USPS tracking documents as "INTERCEPTED" *at the USPS facility* in Los Angeles, California. (Exhibit 2) The next entry in the tracking document states that *at exactly the same time*, June 25, 2018 at 08:58, the backpack was "DELIVERED, INDIVIDUAL PICKED UP AT POSTAL FACILITY." (Exhibit 2)

When Plaintiff learned that USPS had *delivered* the backpack immediately *after* intercepting it, he contacted USPS officials in Massachusetts and California. (See Complaint) Plaintiff was advised to speak with a postal inspector in California. Plaintiff gave the inspector the address to which the backpack was originally sent. The inspector stated that he would initiate an investigation, attempt to locate the package, retrieve it, and send back to Plaintiff. The inspector advised Plaintiff to contact USPS customer service in Boston. (See Complaint)

Plaintiff contacted USPS customer service in Boston. An official there took a description of the missing item and promised to contact the California postal inspector to ensure that an investigation took place, and to determine whether the backpack had been located and retrieved. Neither the California postal inspector nor the Boston customer service official ever followed up with the Plaintiff. USPS officials in both states told Plaintiff that they would assign postal inspectors to investigate and attempt to recover the backpack, but Defendant took no such steps. Plaintiff repeatedly asked USPS officials about the investigation, and was promised that an investigation would take place, but no USPS official ever investigated the matter or otherwise took steps to recover the backpack, locate and retrieve the backpack, or determine what happened to the backpack. (See Complaint)

The backpack was wrongfully delivered, lost, or stolen *at the USPS postal facility in Los Angeles California, at exactly the same time that it was intercepted*, on or about June 25, 2018.

In late October, 2018, an official at the Belmont, MA post office looked at computerized USPS tracking information and stated that it appeared the package had been located by USPS officials in Los Angeles, California, and was en route back to Belmont. (See Complaint) This same USPS official stated that it was not necessary to file a claim because the package had been recovered. That information was incorrect because soon thereafter, the manager at the Belmont, MA post office, Erick Scholl, advised Plaintiff that the backpack had not been located, and that he would send a fax himself to a customer service fax number to determine the location of the backpack. Mr. Scholl stated that he personally called the California postal inspector many times, but received no response. (Exhibits 3-4)

A week or so later, Mr. Scholl told Plaintiff that he did not have any luck determining where the backpack was, and that Plaintiff should call 1-800-332-0317 and ask for a complaint “form 1000” because the package could not be retrieved. A few weeks later, Plaintiff received “form 1000” in the mail. He completed the form and submitted a complaint via certified mail to the USPS Domestic Claims Department in Missouri. Plaintiff’s claim and appeal were denied by Defendant. (See Complaint)

BREACH OF CONTRACT/NEGLIGENCE

Contrary to Defendant’s argument, Plaintiffs’ claims are not simply that a contract was created by the purchase of an intercept. Plaintiff’s backpack was successfully intercepted, and *then immediately delivered* to an unknown individual *at the USPS facility in Los Angeles California*. Defendant created a contract with Plaintiff by accepting Plaintiff’s money for the

intercept and stating, verbally and in the tracking order, that the intercept was successful, and when that information proved to be false, promising to initiate an investigation which never took place, and when *that* information proved to be false, telling Plaintiff the backpack had been recovered and that there was no need to file a complaint, and when *that* information proved to be false, telling Plaintiff the backpack had probably been stolen by a USPS employee, and that he should file a claim with the USPS, which was hopeless, and ultimately denied.

Defendant made false statements and no attempt whatsoever to determine whether a USPS employee stole the backpack, or whether it had been delivered improperly *by a USPS postal employee at the USPS facility in Los Angeles California*. USPS records indicate the intercept was successfully effectuated *at the USPS postal facility in Los Angeles, California at the same time when the intercept failed*, yet Defendant failed even to visit the putative addressee's home to determine whether that person picked up the backpack, so it could at least be determined whether a customer or an employee at the Los Angeles Post Office had taken the backpack.

Plaintiff relied on Defendant's various statements to his detriment. USPS officials negligently performed the intercept, and negligently and recklessly stated that the intercept was successful when it was not, then later stated that that they found the backpack, and when both claims proved untrue, they promised to conduct an investigation. Had these false representations not been made, Plaintiff could have reached out to law enforcement sources, or sought assistance from others, in an attempt to recover his backpack.

For all the above reasons, Defendant's motion should be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Cameron Ellis', written over a horizontal line.

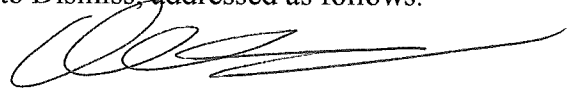
Cameron Ellis, pro se

Dated: December 30, 2019

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 30th day of December, 2019, I caused to be placed in the United States mail (first-class postage prepaid), a copy of the foregoing Opposition to Defendant's Motion to Dismiss, addressed as follows:

Cameron Ellis



Mollie Finnan
Claudia Burke
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
P.O. Box 480, Ben Franklin Station
Washington, DC 20044

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USPS Corporate
Groups

06/18/2018

USPS Tracking Intranet Tracking Number Result

Result for Domestic Tracking Number 9534 6121 6263 8162 2413 76

Destination and Origin

Destination

ZIP Code	City	State
900441242	LOS ANGELES	CA

Origin

ZIP Code	City	State
024789998	BELMONT	MA

Removed
USPS account / stone
~~stone~~

User
Wendy / stone

Tracking Number Classification

Class/Service

Class/Service: USPS Retail Ground USPS Tracking
Class of Mail Code/Description: BP / USPS Retail Ground[®]

Destination Address Information

Address: 11530 S NORMANDIE AVE APT 10
City: LOS ANGELES
State: CA
5-Digit ZIP Code: 90044
4-Digit ZIP Code add on: 1242
Delivery Point Code: 10
Record Type Code: Building/Apartment
Delivery Type: Residential, Central

Origin / Return / Pickup Address Information

Address:
City:
State:
5-Digit ZIP Code: 02478
4-Digit ZIP Code add on: 9998

Shipping Services File

Shipping Services File Number: 9475 0016 9932 0852 1704 46
Date/Time Tendering Mail: 07/07/2018 08:55
Shipping Services File Type: 2 - Tracking File
Shipment Accepted: No

Service Delivery Information

Service Performance Date: Expected Delivery by: Monday, 06/18/2018 by 8:00pm
Network Predicted Delivery Date: Monday, 06/18/2018
Expected Delivery between: 10:50 - 12:50
Expected Delivery Displayed Externally?: Check service calculation information page
Zone: 00
PO Box: N
Other Information: Service Calculation Information

Payment

Payment Type: Other Postage
Payment Account Number: 000000000000
Postage: \$19.60
Weight: 3 lb(s) 11 oz(s)
Rate Indicator: Single-Piece Rate

Agent Information

Eric
484 -
4201

USPS.com
claim
USPS / postal inspectors

Description	Amount	Associated Labels
USPS Tracking	\$0.00	9495 5016 9332 0168 7372 33

Events

Event	Event Code	Event Date	Event Time	Location	Input Method	Scanner ID	Carrier Route	Posting Date / Time (Central Time)	Other Information
PRE-SHIPMENT INFO SENT TO USPS	MA	07/07/2018	08:56	LOS ANGELES, CA 90044	Manifest Generated		Destined to route C023	07/07/2018 08:56:34	
EXPECTED DELIVERY WINDOW	WN	06/25/2018	09:46	LOS ANGELES, CA 90044	System Generated		Expected for route C008	06/25/2018 12:02:40	
DELIVERED, INDIVIDUAL PICKED UP AT POSTAL FACILITY	01	06/25/2018	08:58	LOS ANGELES, CA 90044	Scanned	IMD 030SHCJ659 (non-wireless)	Scanned by route 0044C067	06/25/2018 19:25:38	Facility Finance Number 054534
INTERCEPTED	44	06/25/2018	08:58	LOS ANGELES, CA 90044-19998	Scanned	IMD 030SHCJ659 (non-wireless)	Scanned by route 0044C067	06/25/2018 19:25:38	
ARRIVAL AT UNIT	07	06/25/2018	07:32	LOS ANGELES, CA 90044	Scanned	PASS-001-	Destined to route C008	06/25/2018 09:46:40	PC / OF Reason Code
IN TRANSIT TO DESTINATION	NT	06/24/2018	12:57		System Generated			06/24/2018 14:10:34	
PACKAGE INTERCEPT REQUESTED	VI	06/23/2018	21:01	00000	Customer Driven Activity			06/24/2018 02:47:32	Case / Confirmation Number: WEI1221021
TRACKING INQUIRY, IVR	VT	06/23/2018	13:30		Customer Driven Activity			06/23/2018 13:31:38	
IN TRANSIT TO DESTINATION	NT	06/23/2018	12:57		System Generated			06/23/2018 14:08:38	
TRACKING INQUIRY, IVR	VT	06/22/2018	17:13		Customer Driven Activity			06/22/2018 17:14:33	
IN TRANSIT TO DESTINATION	NT	06/22/2018	12:57		System Generated			06/22/2018 14:06:38	
TRACKING INQUIRY, CALL CENTER	VT	06/21/2018	16:31	LOS ANGELES, CA 90044	Customer Driven Activity			06/21/2018 16:32:59	
TRACKING INQUIRY, IVR	VT	06/21/2018	16:06		Customer Driven Activity			06/21/2018 16:07:37	
TRACKING INQUIRY, IVR	VT	06/21/2018	15:41		Customer Driven Activity			06/21/2018 15:42:35	
ENROUTE/PROCESSED	10	06/21/2018	11:57	PHOENIX, AZ 85043	Scanned	PSS-001-36		06/21/2018 14:11:47	
IN TRANSIT TO DESTINATION	NT	06/19/2018	12:14		System Generated			06/19/2018 14:30:37	
IN TRANSIT TO DESTINATION	NT	06/18/2018	12:14		System Generated			06/18/2018 14:26:34	
IN TRANSIT TO DESTINATION	NT	06/17/2018	12:14		System Generated			06/17/2018 14:28:32	
ENROUTE/PROCESSED	10	06/16/2018	04:14	BELL GARDENS, CA 90201	Scanned	PSS-001-19		06/16/2018 06:20:36	
IN TRANSIT TO DESTINATION	NT	06/15/2018	12:11		System Generated			06/15/2018 11:24:36	
IN TRANSIT TO DESTINATION	NT	06/14/2018	12:11		System Generated			06/14/2018 11:26:33	
IN TRANSIT TO DESTINATION	NT	06/13/2018	12:11		System Generated			06/13/2018 11:20:55	
ENROUTE/PROCESSED	10	06/12/2018	11:11	JERSEY CITY, NJ 07097	Scanned	PSM-2-IU		06/12/2018 10:18:46	
ACCEPT OR PICKUP	03	06/11/2018	16:36	BELMONT, MA 024789998	Scanned	POS 216263	Destined to route C008	06/11/2018 17:54:05	Facility Finance Number 240002

Enter up to 35 items separated by commas.

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December 11, 2018

To Whom It May Concern,

My name is Erick Scholl and I am writing on behalf of the Belmont Post Office in Massachusetts. Our customer named Cameron Ellis came in on 6/11/2018 and sent a retail ground package to Los Angeles, CA. On 6/23/2018 the customer paid for an intercept and rather than it be intercepted the Post Office allowed an individual to pick it up at the postal facility.

Attached you will find tracking and reporting information, claim for damage, a receipt for the product, and a copy of the customers bank statement with the transaction day and date.

Is it possible for someone to take a closer look at the claim that has been sent? The claim was sent on 11/9/2018.

Thank You for your cooperation with this matter.

Erick Scholl



Belmont Manager



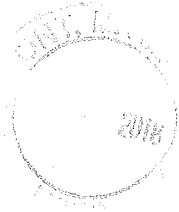
I received a phone call from the claim department phone number 314-345-2900 at 1.02 pm on 12/17/2018 I had mailed a claim form to them by express mail 12/11/2018 tracking number ee386714319us on behalf of Cameron Ellis and his mom Wendy Murphy. We are trying to resolve a claim on a package that was sent to los Angeles California 90044 . The package was sent and arrived 6/25/2018 at 7.32 am

Tracking number 9534-6121-6263-8162-2413-76 The customer paid to have the package intercepted The package in question was intercepted at 8.58 am 6/25/2018 and then delivered At 8.58 am that same day . Ms Murphy has tried to to resolve this with the united states postal inspection service case number cal ca1329171120 and has not received any response . The person that called me from St Louis today asked me to have the customer call 1-800-332-0317 press option 9 and have a form 1000 mailed to them I asked if I could print one out or if he could not . The customer service rep from St Louis stated to me that after Ms Murphy sends back the form 1000 she should receive a letter saying claim denied .

Erick B Scholl



Belmont Ma 02477
Manager



800 Boylston Street, Space 15101A
Mandarin Oriental, Boston
Boston MA 02199
tel (617) 247-3000
Fax: 8/24/17 11:16:26
3

Date: 8/2/71
Register: 3

Trans #: 15455
Store: 23047
Cashier: 1002958
Customer: CAMERON ELLIS
Customer ID: 23047003004973

Date: _____
Register: _____

: 15455
e: 23047
ier: 1002958
stomer: CAMERON ELLIS
ustomer ID: 23047003004975

***** REPRINT - REPRINT *****
***** REPRINT - REPRINT *****
***** REPRINT - REPRINT *****

PRICE
1,250.00
1,250.00
608370KLQAX - 9772 - NA

QTY: _____
07 / 2AT (JORGE)

ITEM 805022709
110 LUGGAGE
Salesperson: 1002958 (JORGE)

807209267
154 MENS BELTS
Salesperson: 1002958 (JORGEE)
i 96/908 411924K8DHH - 230.00
i 151/P.C 44796AKLQHG - 8526 - NA 230.00
i (JORGEE)

807514018
120 WOMENS SWLG 837
Salesperson: 1002958 (JON)

Subtotal	1,844.06
Tax	104.06
Total(USD)	1,944.06
USD	1,944.06

Debit Card TRANSACTION RECORD REG # 3

STORE # 23047
INVOICE # 545508
MERCHANT # 07329403
TERMINAL # 073294
** DIRECT P

0732
073294
** DIRECT PAYMENT **

** DIRECT PAYMENT
 TYPE: Sale
 DEBIT: VISA
 US DEBIT
 0154 2017
 11
 258

US DEBIT *****0154
CARD # 08/24/2017 RESP 00
DATE/TIME: AUTH # ISO 00
REF # 101753
545508 CUR: 0840
AID: A000000000000000
TS1: 6800 ARC: 00
TUR: 8080048000
APP: US DEBIT
IAD: 06010A03600000

Total USD\$

Approved

Verified by PIN

IMPORTANT:
retain this copy for your records

Change
SOLD ITEM COUNT = 3

IMPORTANT
 With this copy for your
 age
 OLD ITEM COUNT = 3
 REPRINT - REPRINT - REPRINT - REPRINT
 Total
 1,572.50
 92

0.00

Total
1,572.50

Tax
92.50

1 Stone Rd
Belmont, MA 02478



X-RAYED

JAN 10 2020

DOJ MAILROOM

1040
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Mollie Finnar
Claudia Burke
U.S. Dept of Justice
Civil Division
Commercial Litigation Branch
PO Box 480, Ben Franklin Station
Washington, DC 20044

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